

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

United States of America,

vs.

Isaac Nelson,

Defendant.

Criminal No. 3:09-930-CMC

OPINION AND ORDER

This case comes before the court on Defendant's *pro se* Motion Pursuant to the First Step Act of 2018. ECF No. 493. Defendant requests a reduction in sentence and appointment of counsel to determine whether he is eligible for relief under the First Step Act. For the reasons explained below, Defendant's motion is denied.

Defendant was charged in an Indictment on August 19, 2009, with two counts. ECF No. 3. Defendant entered into a Plea Agreement to plead guilty to Count 1 of the Indictment, specifically, conspiracy to distribute 50 grams or more of cocaine base or 5 kilograms or more of cocaine. ECF No. 149. He entered a guilty plea on January 28, 2010. ECF No. 150. At the Rule 11 hearing, the Government noted it was willing to accept a plea to five kilograms or more of cocaine only, and Defendant admitted guilt as to personal involvement with at least five kilograms of cocaine. ECF No. 495 at 22, 27. He was sentenced on June 10, 2010, to 240 months' imprisonment and ten years' supervised release. ECF No. 264.

In 2010, Congress passed the Fair Sentencing Act to reduce the disparity in the treatment of cocaine base and powder cocaine offenses by increasing the quantities of cocaine base required to trigger 21 U.S.C. §§ 841(b)(1)(A) and (B). *See* Pub. L. No. 111-220, 124 Stat. 2372 (emphasis added). The First Step Act of 2018 applied these provisions of the Fair Sentencing Act retroactively. *See* Pub. L. No. 115-391, 132 Stat. 5194. Under § 404 of the First Step Act, a court

that imposed a sentence for an offense covered under the Fair Sentencing Act “may, on motion of the defendant, . . . impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 . . . were in effect at the time the offense was committed.” *Id.* Consideration for a reduction in sentence is not available under the First Step Act “if the sentence was previously imposed . . . in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010.” *Id.* at §404(b).

A motion under the First Step Act on Defendant’s behalf would fail.¹ Defendant did not admit to Count 1 as to cocaine base, but only as to powder cocaine. ECF No. 495 at 27. Therefore, the court accepted his plea to Count 1 based only on his involvement in five kilograms or more of cocaine. *Id.* at 22:14-18. Statutory penalties for convictions involving cocaine were not reduced by the First Step Act. Accordingly, Defendant’s motion for appointment of counsel regarding eligibility under the First Step Act (ECF No. 493) is denied.

IT IS SO ORDERED.

s/Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
Senior United States District Judge

Columbia, South Carolina
July 29, 2019

¹ The Federal Public Defender has reviewed Defendant’s case, and informed the court that office would not be filing a motion under the First Step Act on Defendant’s behalf.